

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed
Adoption of Department of
Employee Relations Rules
Relating to Local Government
JUDGE
Pay Equity Compliance,
Minnesota Rules, Parts
3920.0100 to 3920.1300.

REPORT OF THE
ADMINISTRATIVE LAW

The above-entitled matter came on for hearing before Administrative Law Judge Allen E. Giles on July 8, 1992 at 9:00 a.m. in the Basement Hearing Room, State Office Building, 435 Park Street, St. Paul, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. WR WR UHFHLYH SXEOLF FRPPHQW WR GHWHUPLQH ZKHWKHU WKH Minnesota Department of Employee Relations ("the Department") has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules; to determine whether the proposed rules are needed and reasonable; and to determine whether or not modifications to the rules proposed by the Department after initial publication constitute impermissible substantial changes.

Catherine M. Keane, Special Assistant Attorney General, Government Services Section, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Department. Linda M. Barton, Commissioner, Minnesota Department of Employee Relations, Faith Zwemke, Pay Equity Coordinator, Dr. Charlotte Striebel, Department Consultant, and Bonnie Watkins, Communications Director, also spoke on behalf of the Department.

Approximately 45 people attended the hearing. Thirty five of these persons signed the hearing register and 10 persons provided oral testimony. The following persons made oral comments at the public hearing: Howard Miller, Consultant to the Robbinsdale Public Schools; William Hunt, City of Fridley; Rick Kreyer, St. Paul Public Schools; Sherry Le, League of Minnesota Cities; Char Knutson, City of St. Paul; Scott Knutson, Minnesota Chapter of the National Housing and Redevelopment Officials; Marge Atkinson, Minnesota Library Association; and Robert O'Connor, I.M. O'Connor and Associates.

Written comments relating to the proposed rules were submitted to the Administrative law Judge by the following individuals, organizations and local government agencies: City of Cottonwood; Commission on the Economic Status of Women; Howard Miller, Consultant; City of Redwood Falls; Minneapolis Building and Trades Council; International Union of Operating Engineers; Robert O'Connor, I.M. O'Connor and Associates; Miriam Kragness, R.O.I. Consultants; Minnesota Nurses Association; City of Crookston, City of Virginia; City of Plainview; League of Minnesota Cities; City of Willmar; City of Inver Grove Heights; City of Adrian; City of Cleveland; City of Roseville; City of

Moorhead; City of Lake City; City of Plymouth (concerns shared by Apple Valley, Bayport, Blaine, Brooklyn Park, Brooklyn Center, Eden Prairie, Fridley, Golden Valley, Hopkins, Maple Grove, Maplewood, Mounds View, New Hope, Plymouth, Red Wing, Richfield, Robbinsdale, Woodbury and the League of Cities); and the Metropolitan Inter-County Association.

The record remained open for submission of written comments for 12 days following the date of the hearing, to July 24, 1992. Pursuant to Minn. Stat.

14.15, subd. 1 (1990), five business days were allowed for the filing of responsive comments. At the close of business on July 31, 1992, the rulemaking record closed for all purposes. The Administrative Law Judge received 22 timely comments from interested persons during the comment period. The Department submitted written comments responding to matters discussed at the hearing and during the comment period.

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rules. The agency may then adopt a final rule or modify or withdraw its proposed rule. If the Department makes changes in the rule other than those recommended in this report, the Department must submit the rule with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the agency must submit it to the Revisor of Statutes for a review of the form of the rule. The agency must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Nature, of the Proposed Rules and Statutory Authority,

1. The proposed rules establish standards for determining compliance with the Local Government Pay Equity Act. Minn. Stat. 471.991-471.999 (1990) hereinafter referred to as the "Pay Equity Act." The Minnesota Legislature enacted the Pay Equity Act in 1984, requiring all the state's political subdivisions to establish "equitable compensation relationships." The Pay Equity Act defines equitable compensation relationships to mean that the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value.

2. The Pay Equity Act applies to an estimated 163,000 employees and to 1,600 political subdivisions in the state of Minnesota, primarily cities, counties and school districts. All jurisdictions were required to achieve pay equity by December 31, 1991, seven years after the original law was passed by the Legislature.

3. This is the second rulemaking proceeding concerning the proposed Pay Equity Act compliance standards. The first rulemaking proceeding on the

proposed rule was initiated with a Notice of Hearing published in the State Register on October 14, 1991 (16 S.R. 893-909). A hearing was held on November 14, 1991, The Report of the Administrative Law Judge was issued on December 31, 1991. The Administrative Law Judge found that the rules as proposed, and the amendments to the rules proposed by the Department following publication, were needed and reasonable and that the amendments proposed by

the Department following initial publication did not constitute substantial changes. However, the Administrative Law Judge also found that the Department's failure to include a Fiscal Note in the Notice of Hearing constituted a defect in the rule which required republication or re-notice of the proposed rules with an adequate Fiscal Note in the Notice of Hearing.

4. On January 2, 1992, the Chief Administrative law Judge approved the Report of the Administrative Law Judge in all respects and concluded that the Department did not meet the notice requirements of Minn. Stat. 14.14, subd 1(a), in that the Notice did not contain the information required by law under Minn. Stat. 14.11, subd. 1. The Chief Administrative Law Judge further found that in order to adopt the proposed rule, the Department must re-commence the rulemaking process by giving the proper statutory notice and complying with all related substantive and procedural requirements.

5. The Department recommenced the rulemaking process under Minn. Stat. 14.14 by proceeding with another public hearing. The rules proposed are those published on October 14, 1991, in the State Register at 15 S.R. 893-909 as modified by the amendments the Department proposed at the November 14, 1991, hearing and additional changes as proposed in its post-hearing comments dated November 25, 1991. The amendments and the Notice of Hearing for this rulemaking proceeding were published on June 1, 1992, in the State Register at 16 S.R. 2598. No further changes or amendments have been proposed by the Department.

6. The entire record of the first rulemaking proceeding has been incorporated into the record of this proceeding as an exhibit. This included the Department's original Statement of Need and Reasonableness ("SONAR"), all exhibits offered by the Department and others during the first rulemaking proceeding, all post and pre-hearing written comments, and all testimony from the earlier hearing. A list of all documents and other materials contained in the record of the first rulemaking proceeding was attached to the Department's Supplemental SONAR dated May 18, 1992 as Exhibit A.

Fiscal Note.

7. Minn. Stat. 14.11, subd. 1 requires a fiscal note if a proposed rule will require local public bodies to incur costs higher than \$100,000.00 in either of the two years immediately following the adoption of a rule. Minn. Stat. 14.11, subd. 1 provides in part as follows:

If the adoption of a rule by an agency will require the expenditure of public money by local public bodies, the appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule if the estimated total cost exceeds \$100,000.00 in either of the two years.

8. The Department has estimated that the statewide costs to local public bodies to implement pay equity and to come into compliance with the rules and the law to be \$16,414,992.00. Pay Equity Supplemental SONAR at 6. This estimated amount is contained in the Department's Notice of Hearing published in the June 1, 1992 State Register.

9. The Department's 16.4 million dollar estimate is based upon an assumption that one-third of the approximately 1,600 jurisdictions required to comply by December 31, 1991, will be found not-in-compliance by the Department's initial compliance review. The Department's assumption of one-third out of compliance is based upon its experience conducting preliminary evaluations of local government compliance reports. The rate of not-in-compliance for these preliminary evaluations was 33%. The Department used a representative sample of the 1,600 jurisdictions in terms of size, type, range of costs, and number of employees. Also, based on an analysis of the preliminary reports, the Department estimated that the average cost to come into compliance for a jurisdiction will be \$31,089.00. This figure was multiplied by 528 (one-third of the 1,600 jurisdictions required to report) to arrive at the overall estimate of \$16,414,992.00.

10. The Administrative Law Judge finds that the fiscal note contained in the Department's Notice of Hearing is a reasonable estimate of the statewide costs to local public bodies of coming into compliance with the proposed rule. The Department has complied with the requirements of Minn. Stat. 14.11, subd. 1.

Small Business Consideration in Rulemaking.

11. Minn. Stat. 14.115, subd. 2 provides that state agencies proposing rules affecting small businesses must consider methods for reducing adverse impact on those businesses. The proposed rules relate to political subdivisions and other local public bodies acting as employers. The proposed rules have no impact on small businesses as defined in Minn. Stat. 14.115, subd. 1. The Administrative Law Judge finds that the requirements of Minn. Stat. 14.115 do not apply to the proposed rules.

Impact on Agricultural Land.

12. Minn. Stat. 14.11 subd. 2 (1990), imposes additional statutory requirements if the proposed rules have a "direct and substantial adverse impact on agricultural land in the state." The Administrative law Judge finds that the proposed rules will not have a direct and substantial adverse impact on agricultural land in the state.

Procedural Requirements

13. On May 14, 1992, the Department filed the following documents with the Chief Administrative Law Judge:

- (a) A copy of the proposed rules certified by the Revisor of Statutes.
 - (b) The Order for Hearing.
 - (c) The Notice of Hearing proposed to be issued.
 - (di) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
 - (e) The Statement of Need and Reasonableness and a Supplemental Statement of Need and Reasonableness.
 - (f) A Statement of Additional Notice.
14. On June 1, 1992, a Notice of Hearing and a copy of the proposed rules were published at 16 State Register 2598.

15. On June 11, 1992, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

16. On June 11, 1992, the Department filed the following documents with the Administrative Law Judge:

- (a) The Notice of Hearing as mailed.
- (b) The Agency's certification that its mailing list was accurate and complete.
- (c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
- (d) An Affidavit of Additional Notice.
- (e) The names of personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
- (f) A copy of the State Register containing the proposed rules.
- (g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 16 State Register 2411 and a copy of the Notice.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

17. The period for submission of written comment and statements remained open through July 24, 1992, the period having been extended by order of the Administrative Law Judge to 12 days following the close of the comment period.

Reasonableness of the Proposed Rules.

18. The rules proposed in this proceeding are the same as the rules addressed by the Report of the Administrative Law Judge dated December 31, 1991 (hereinafter referred to as "ALJ_Report I"). The Department's Notice of Hearing for the instant rulemaking proceeding proposed the same rules and amendments. The amendments to the rule made during the first rulemaking proceeding were published in the state Register along with the Notice of Hearing on June 1, 1992. Except for correction of a typographical error, the Department has proposed no change to the rules in this rulemaking proceeding.

19. A number of commentators have asked that the Administrative Law Judge revisit and reconsider determinations of statutory authority and need and reasonableness of the proposed rules made by the Administrative Law Judge in the first rulemaking proceeding. In its comments in response to concerns raised by commentators the Department suggests that the Administrative Law Judge has already determined that certain parts of the rule to be needed and reasonable, and implies that there is no need for further examination.

20. The Administrative Law Judge finds that due process and the fair

opportunity to participate in the rulemaking process requires that the Administrative Law Judge consider and review all the comments submitted prior to any determination of need and reasonableness of the rules proposed in this proceeding. A determination of reasonableness in the first proceeding should not necessarily guarantee the same determination in the instant proceeding. Because this is a new rulemaking proceeding with her comments the Administrative Law Judge must consider and determine the need and reasonableness of the proposed rules regardless of the Findings and Conclusions contained in ALJ Report I.

21. The Administrative Law Judge finds and concludes that this Report is not bound by any of the Findings and Conclusions determined in ALJ Report I in the first rulemaking proceeding.

22. The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. *Broen Memorial Home v. Minnesota Department of Human Services*, 364 N.W.2d 436, 440 (Minn. Ct. App. 1985); *Blocker Outdoor advertising Company v. Minnesota Department of Transportation*, 347 N.W.2d 88, 91 (Minn. Ct. App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." *Manufactured Housing Institute v. Petersen*, 347 N.W.2d 238, 244 (Minn. 1984). In support of the adoption of the proposed rules the Department has prepared a SONAR and a Supplemental SONAR. As its primary affirmative presentation of the need and reasonableness of the proposed rule the Department relies on its SONAR and testimony at the public hearings and comments after the public hearings in the first and second rulemaking proceedings.

23. After careful review and consideration of the comments received during this rulemaking proceeding and consideration of the Department's SONAR and Supplemental SONAR, the Administrative Law Judge finds that the Department has affirmatively established the need and reasonableness of each part of the proposed rules except as otherwise qualified and determined by the Findings and Conclusions in this Report.

24. After due consideration to the comments at the hearing on July 8, 1992. and after careful review and consideration of the Department's affirmative presentation in support of the proposed rules, the Administrative Law Judge hereby adopts and incorporates as his analysis in this proceeding all of the Findings and Determinations contained in ALJ Report-I except as qualified, limited or rescinded by the Findings and Conclusions in this Report.

Implementatioa Deadline Date.

25. The Department observed in its Supplemental SONAR that Findings 28 and 39 of ALJ Report I when read together suggest that the Commissioner of Employee Relations has the authority to extend the pay equity implementation deadline (December 31, 1991) established by the Minnesota Legislature in Minn.

Stat. 471.9981, subd. 6(a). The Commission on the Economic Status of Women and the Department, in their comments, explained that the Commissioner of Employee Relations does not have the discretion to extend the compliance deadline for all jurisdictions. The Department provides a review and analysis of the statute and accompanying Legislative history to demonstrate that while the Commissioner may extend the deadline for a particular jurisdiction after a compliance review, the Commissioner may not extend the implementation date set by the Legislature.

26. Upon review and study of the Department's analysis the Administrative Law Judge concludes that the Commissioner of Employee Relations does not have the authority to extend the pay equity implementation deadline for all jurisdictions. The Administrative Law Judge hereby clarifies Findings 28 and 39 and rescinds parts of those findings that suggest or imply that the Commissioner has the authority to extend the deadline for pay equity implementation for all jurisdictions statewide.

27. Nearly all the commentators expressing concern about the proposed rules asserted that it was inappropriate and unreasonable for a jurisdiction's pay equity compliance status to be judged on the basis of standards that were not in effect on the implementation deadline date of December 31, 1991. Jurisdictions will be judged based on pay equity standards that don't come into existence until nearly one year after the deadline for implementation of pay equity.

28. In response to these comments the Department states in its comments that it does not have the statutory authority to extend the compliance deadline set forth in Minn. Stat. 471.9981, subd. 6(a). Therefore, the Department must evaluate compliance as of December 31, 1991. Further, the Department explained that the Legislature did not give the Department authority to promulgate proposed rules until May of 1991, approximately seven months before the implementation deadline was scheduled.

29. The Administrative Law Judge finds that because the Department has no authority to change the deadline for implementation, the concerns expressed cannot be resolved by the Department. Because only the Legislature has authority to change the implementation deadline, the concerns are more appropriately matters for the Legislature to consider.

Jurisdictional Determination.

30. The League of Minnesota Cities, the City of Lake City, City of Adrian, City of Plainview and the City of Willmar expressed concern about the proper determination of the jurisdiction responsible for establishing equitable compensation relationships under the Pay Equity Act. The concern expressed by these commentators arises from circumstances where, for example, a municipality has several operating units that function autonomously with separate governing boards and commissions. An example is the City of Willmar which has a hospital and a municipal public utility separate from the city government. These separate operating units establish budgets, set salaries for employees and negotiate with various collective bargaining units. These commentators argue that because of these autonomous operations, these separate units of municipalities should be the responsible jurisdiction for implementing pay equity compliance.

31. Under the proposed rules the entity with "final budgetary approval authority" is the responsible jurisdiction because it is this entity which ultimately is in the best position to establish equitable compensation relationships.

32. Upon review of Findings 66 - 73 in ALJ Report I where these issues are more thoroughly addressed, and after consideration of the argument made by the commentators above, the Administrative Law Judge reaffirms the Finding that the Department's proposal to hold the entity with the final budgetary authority responsible has been demonstrated to be reasonable and appropriate.

Compliance Notification - Minn. Rules Pt. 3920.0809,

33. The City of St. Paul proposes that the pay equity rules be amended to include a pre-compliance conference. The City states in its comments:

It is the very least that could be done to allow cities and counties an opportunity to provide evidence of

mitigating circumstances or possibly come up with an acceptable compliance plan prior to being subjected to a public accusation of gender based pay discrimination.

34. The Administrative Law Judge notes that pre-compliance conferences have been proposed by other commentators in the first rulemaking proceeding. Findings 116 - 122 in ALJ Report I address this issue in detail. The Department has previously explained that a pre-compliance conference is inconsistent with the framework of the Pay Equity Act and, therefore, has refused to include such a conference in the proposed rules.

35. After consideration of the City of St. Paul's arguments in support of a pre-compliance conference and after further consideration of the record, the Administrative Law Judge agrees with the Department's interpretation of the Pay Equity Act and concludes that the Pay Equity Act does not contemplate a pre-compliance conference.

Definition of Employee - Minn. Rule Pt. 3920.0100, subp. 5.

36. Several commentators expressed concern regarding the inclusion of part-time and seasonal employees within the definition of "employee" in their pay equity compliance reports. The City of Roseville, City of Redwood Falls, and the City of Adrian, expressed a concern regarding definition of "employee" similar to that expressed by the City of New Brighton in Finding 60 of ALJ Report. The City of New Brighton stated as follows:

We do not feel that the scope of pay equity plans need to include part-timers to effectively accomplish its purpose. Because part-time employees are generally not covered by fringe benefits, the validity of statistical comparisons with full-time employees for 'equity' purposes is questionable.

37. The Department explained in its comments that a jurisdiction will not be automatically out of compliance as a result of the application of benefits to part-time and seasonal employees. The Department asserted that it was necessary to examine benefits for all eligible classes of employees to determine whether there may be sex-based disparities in benefits which affect total compensation.

38. Upon review of ALJ Report I, Findings 59 - 63 addressing this issue, and after consideration of the concerns of the cities of Redwood Falls, Adrian and Roseville, the Administrative Law Judge reaffirms the decision on this issue found in Finding 63, where the Administrative Law Judge found that the Department had affirmatively justified the definition of employee as needed and reasonable.

Other Tests of Pay Equity Compliance - Minn. Rules Part 3920.0700.

39. Several commentators including principally the Minnesota League of Cities, recommended that the Administrative Law Judge reconsider the inclusion of certain "Other Tests" of pay equity compliance contained in Minn. Rules Pt. 3920.0700. These "Other Tests" include the Salary Range Test and the

Exceptional Service Pay Test. The League argues that there are several examples of legitimate non-gender related reasons for disparities between

male-dominated and female-dominated classes for example, disparities in salary range and exceptional pay (longevity) which are often the result of collective bargaining agreements, not gender based discrimination.

40. The Administrative Law Judge notes that the definition of "compensation" includes exceptional service pay. In order to determine whether female-dominated classes are being compensated consistently below male-dominated classes, it is appropriate to also examine exceptional service pay. The Department explained that one of its reasons for examining exceptional service pay is as follows:

If jurisdictions provide consistent compensation to male and female classes in every other way, but provides significant additional compensation to male classes in the form of longevity or performance pay, the law's purpose can be significantly undermined.

41. The Administrative Law Judge finds that it is reasonable to include the Exceptional Service Pay Test for determining pay equity compliance.

42. The Salary Range Test measures the length of time required for female-dominated classes to reach the maximum of the applicable salary range as compared to male-dominated classes. The salary range test is discussed in detail in ALJ Report 1, Findings 103 - 109. The Administrative Law Judge notes that the League of Minnesota Cities concern is identified in Finding 106. Upon review of the Findings on this issue in ALJ Report I, and reviewing again the League of Minnesota Cities concern about the Salary Range Test, the Administrative Law Judge finds that the Salary Range Test is reasonable and should be included for determining a jurisdiction's pay equity compliance.

Housing and Redevelopment Agencies.

43. The National Association of Housing and Redevelopment Officials (NAHRO) in written comments and in oral comments at the hearing on July 8, 1992, expressed concern that housing and redevelopment authorities may have some difficulty complying with the requirements of the Pay Equity Act. In written comments the organization stated as follows:

The fiscal and administrative controls imposed by HUD can pose significant problems as a housing authority attempts to comply with the requirements of the Minnesota Local Government Pay Equity Act. In particular, HUD control over salaries and wages may limit the agency's ability to directly control its personnel costs . . . The state needs to allow for circumstances that cause non-compliance which are out of the local jurisdiction's ability to control.

NAHRO acknowledged that Minn. Rules Part 3920.0900, subp. 9.G.(2) relating to fiscal constraints appeared to address their concern. However, NAHRO recommended that the Department insert language in the rule that specifically recognizes federal regulations or laws that may prevent a jurisdiction from fully complying with the Pay Equity Act.

44. In its responsive comments the Department stated that it agreed that some of the potential problems cited by NAHRO could be viewed as constraints under Minn. Rules Part 3920.0900, subp. 9.G.(2). The Department noted that, although it could not comment definitively on hypothetical situations, to the extent that a federal law directly conflicts with the Pay Equity Act a question of federal preemption may arise and the Department will consider this issue if it arises. Based on the foregoing, the Administrative Law Judge concludes that the Department's proposal to address their concerns as the matter arises is reasonable.

Calculation of Minimum and Maximum Salary - Minn. Rules Part 3920.0300, subp. 5 (f)(1)

45. The Minneapolis Building and Construction Trades Council expressed concern about the method for calculating minimum and maximum salary. The concern is that by multiplying the hourly wage by annual hours to determine monthly salary, the proposed rule will inflate the actual earnings of seasonal and intermittent workers.

46. The Administrative Law Judge finds that these concerns were addressed fully in ALJ Report I Findings 64 and 65. The Department explained its reason for rejecting the instant proposal as follows:

The fact that certain traditionally male-dominated classes may earn a greater salary for working less time than female-dominated classes for more 'permanent' work is not a good reason to diminish the earnings of seasonal or intermittent workers . . .

47. Upon consideration the Administrative Law Judge finds that the method of calculating minimum and maximum pay is reasonable and appropriate.

Challenges to the Statistical Model and the Computer Program used for Evaluating and Determining Pay Equity Compliance

48. One of the biggest challenges to the Department in the development of standards for determining pay equity compliance was the creation of a statistical model for "predicting pay" that female-dominated classes should receive. The Department obtained the services of an expert to assist in the development of a statistical model. A number of other persons who are also experts in this area have identified what they perceive as "serious flaws" or weaknesses in the Department's statistical model. They have made recommendations to the Department and the Administrative Law Judge that they argue would strengthen or make the Department's model a more accurate measurer of "predicted pay". The Administrative Law Judge has carefully considered the

recommendations of Dr. Howard Miller, Dr. Marian E. Kragness and Mr. Robert M.

O'Connor. These persons have impressive credentials and substantial experience advising local governments on pay equity compliance. They have objected to certain methodologies used by the Department in its statistical model and have pointed out anomalies that may or have occurred.

49. The City of Plymouth along with several other cities in the Metro Area have asserted that the Department's statistical model is flawed because it requires weighting of male-dominated classes and because it does not include "balanced classes".

50. The Administrative Law Judge's concern in passing on the Department's statistical model is not whether it produces anomalies in a few particular instances, but whether the statistical model reasonably accurately measures as it should. The rule must be "rationally related to the end sought to be achieved" by the Pay Equity Act. The Department has explained in its SONAR the operation of its statistical model and how the statistical model is used for determining pay equity compliance. The Department's statistical model may include methodologies for accomplishing certain policy judgments that might not make it effective in every particular instance. But the Department, as the agency delegated authority to write this rule, is entitled to a rule that represents its policy judgments, and a model that reasonably operates as it should.

51. The Administrative Law Judge finds that the statistical model used by the Department for the Statistical Analysis Test is reasonable and needed and consistent with the Pay Equity Act.

52. The Department has made available to all jurisdictions a computer program that can be used to perform the calculations required to determine pay equity compliance. Several commentators, including Dr. Kragness, Mr. O'Connor and Mr. William C. Hunt, assistant to the Fridley City Manager and others, assert that the Department's computer program "does not correctly perform the calculations specified in the rules". Mr. Hunt identified circumstances experienced by the City of Fridley that showed that various tests are extremely sensitive to changes in data, are subject to manipulation and may give unreliable results.

53. The Department's computer program is not a part of these rules. The computer program is a tool used for making calculations required to determine pay equity compliance. The need and reasonableness of the Department's proposed rules are at issue in this proceeding, not the computer program. In ALJ Report I, Finding 85, the Administrative Law Judge found that challenges to the computer program were "applications issues which are more appropriate for an enforcement-type proceeding." The Administrative Law Judge affirms that conclusion.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Department gave proper notice of the hearing in this matter.
2. That the Department has fulfilled the procedural requirements of Minn. Stat. 14.14, and all other procedural requirements of law or rule.

3. That the Department has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).

4. That the Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. 14.14, subd. 2 and 14.50 (iii).

5. That the Department did not make additions and amendments to the proposed rules after publication of the proposed rules in the State Register;
therefore the Department has made no substantial change to the rules.

6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Department from modification of the rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated- August 1991.

ALLEN E. GILES
Administrative Law Judge

Tape Recorded: Tape Nos. 11,539 and 11,667.